

## Managing a Section 8, Section 236, PRAC/LIHTC Project



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## HUD-Assisted Projects and LIHTC

- ☐ Across the country, owners are using the LIHTC program to refinance and recapitalize their HUD-assisted properties
- ☐ With little money in HUD's budget to address their physical needs, owners are using the proceeds from the sale of LIHTC to extend the useful life of their projects

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## HUD Plus LIHTC cont'd

- ☐ Once an owner adds the equity from the sale of LIHTC to their project's financial structure, property management must meet the compliance requirements of the LIHTC program while continuing to follow all the rules for the HUD program active at their property
- ☐ This seminar discusses where the requirements for HUD programs and LIHTC cross, and how an owner operates a project in compliance with both

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### Project Based Section 8

- ☐ HUD provides rental assistance for eligible residents through a contract with the owner
- ☐ The rental subsidy is tied to the project
- ☐ The owner is responsible for all program screening, and for completing initial certifications and recertifications

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### 202/8 Projects

- ☐ A project developed by a nonprofit organization using a loan from the federal government through the 202 program
- ☐ A 202 project that has a project-based Section 8 project is referred to as a 202/8
- ☐ Must follow the rules for the Section 8 program and meet the additional eligibility requirements of the 202 program

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### Section 236 Program

- ☐ FHA insured the mortgage for a project through the 236 program
- ☐ Additionally, the federal government makes a payment for the project called an interest reduction payment (IRP)
- ☐ Some residents at 236 projects receive subsidy through a Section 8 contract or the RAP or Rent Supplement programs

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## RAP and Rent Supplement Programs

- ☐ Two smaller programs that provide project based rental subsidy
- ☐ These programs are comparable to but not identical to project-based Section 8
- ☐ RAP found only in Section 236 projects
- ☐ Rent Supplement found in 236, 202, etc... projects

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## PRAC Program

- ☐ In 1990, the 202 program changed from a loan to a capital advance program
- ☐ HUD provides a grant to a nonprofit organization to develop housing for the elderly or persons with disabilities
- ☐ HUD provides rental assistance through a project rental assistance contract (PRAC) comparable to a Section 8 contract

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## PRAC Program cont'd

- ☐ A 202 PRAC is developed to provide housing for elderly persons
- ☐ An 811 PRAC is developed to provide housing for persons with disabilities
- ☐ There are many PRAC group homes designed to provide housing and other services designed for persons with specific disabilities

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## New PRACs

- ☐ The PRAC program is the only one of these HUD programs creating new affordable housing today
- ☐ Nonprofit organizations can form partnerships with for profit entities who make equity contributions to help finance the project in exchange for benefitting from the LIHTC

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## Part One

### Eligibility Issues

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## Eligibility Issues

- ☐ Income Limits
- ☐ Income Calculations
- ☐ The Student Rules
- ☐ Projects for the Elderly/Disabled

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## Eligibility Issues cont'd

- ☐ Waiting List Requirements
- ☐ Occupancy Standards
- ☐ Forms
- ☐ Fair Housing and Section 504

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## Income Limits

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## Income Limits - Reminder

- ☐ Low Income Limit = 80% of the AMI
- ☐ Very Low Income Limit = 50% of the AMI
- ☐ Extremely Low Income Limit = 30% of the AMI

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## Program Income Limits

- ☐ Owners must use the low income limit to determine an applicant's eligibility to live at a Section 236 property
- ☐ Both the RAP and Rent Supplement programs require an owner use the low income limit to determine an applicant eligible to receive rental subsidy

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## Project Based Section 8 Income Limits

- ☐ The income limit to receive assistance through a project-based Section 8 contract depends on the effective date of the project's original HAP contract
  - ☐ Original effective date before 10/1/81 – Use the low income limit (Pre-'81 Universe)
  - ☐ Original effective date on or after 10/1/81 – Use the very low income limit (Post-81 Universe)

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## PRAC Income Limit\*

- ☐ Owners of 202/811 PRAC projects use the very low income limit to determine applicant eligibility
- ☐ \*Some projects with subsidy contracts originally effective in the 1990s allow the owner to use the low income limit for their PRAC projects

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## Tax Credit Income Limits

- ☐ There is no single income limit used to determine eligibility for the LIHTC program
- ☐ The income limit an owner uses to determine LIHTC eligibility is established in the project's minimum set aside

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## LIHTC Income Limits cont'd

- ☐ If the owner committed to the:
  - **20% @ 50%** minimum set aside, they use the tax credit income limit calculated at 50% of the AMI
  - **40% @ 60%** minimum set aside, they use the tax credit income limit calculate at 60% of the AMI (25% @ 60% in New York City)

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## Deep Rent Skew LIHTC Projects

- ☐ When an owner elects to deep rent skew, they commit to a minimum set aside and also promise the IRS and their HFA that they will rent 15% of their LIHTC units to residents with income no greater than 40% of their AMI

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## Deep Rent Skew Example

- ❑ 200 unit project
- ❑ Owner commits to the 40% @ 60% minimum set aside and to deep rent skew
- ❑  $200 \text{ units} \times 40\% = 80 \text{ units}$  in the minimum set aside
- ❑  $80 \text{ units} \times 15\% = 12 \text{ units}$  must be rented to residents below 40% of the AMI

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## HERA 2008

- ❑ HERA made changes to how income limits are calculated for LIHTC projects
- ❑ HERA protected owners from rent decreases in 2009 and established a new system for owners to hold their income limits and rents harmless in the LIHTC program beginning in 2010
- ❑ HUD refers to an LIHTC project as a multi-family tax subsidy project (MTSP)

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## MTSP Income Limits

- ❑ HUD issues 2 sets of income limits for MTSPs:
  - Income limits for Impacted MTSPs
  - Income limits for non-Impacted MTSPs

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## Impacted MTSPs

- ☐ An Impacted MTSP is any project with income limits that were determined in 2007 or 2008 under HUD's hold-harmless policy
- ☐ The project's income limits would have decreased in 2007 or 2008 if HUD had not held them at the previous year's level
- ☐ A project must have been in service **before** 2009 to be an Impacted MTSP

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## Impacted MTSPs cont'd

- ☐ A single building property must have been in service prior to the end of 2008
- ☐ A multi-building property may qualify as an Impacted MTSP if at least one of its buildings was in service prior to 2009
  - ☒ Remember that a multi-building property is defined on line 8b of the project's 8609 forms

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## Acquisition/Rehab Properties

- ☐ Acquisition credits are placed in service on the date of acquisition
- ☐ A building's rehab credits are PIS as the owner completes its rehab activities
- ☐ An ac/rehab project may qualify as an Impacted MTSP if its acquisition credits were placed in service before 2009

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### MTSP Income Limits

- ☐ If the income limit chart lists only a Very Low Income Limit and 60% Income Limit for a county or metropolitan area, all LIHTC in the area use these income limits
- ☐ If the chart includes a second set of income limits, each owner must determine if their project was placed in service before 2009

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### MTSP Income Limits cont'd

- ☐ The owner of a non-Impacted project uses the Very Low Income and 60% limits
- ☐ The owner of an Impacted project uses the HERA Special 50% and HERA Special 60% income limits

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### MTSP Income Limits cont'd

- ☐ May be counties for which HUD published HERA Special limits in 2009 but not 2010 and vice versa
- ☐ HUD does not publish HERA Special limits if they are less than the non-Impacted limits
- ☐ An Impacted project remains eligible to use any HERA Special limits HUD publishes for the area in future years

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### Existing Projects - 2010

- ☐ An existing non-Impacted project is one that is placed in service after 12/31/08 and before the date HUD issues the new income limits for the current year
- ☐ HUD issued the income limits for 2010 on May 14, 2010
- ☐ An existing project in 2010 had to be placed in service **on or before May 13, 2010**

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### Existing Projects - 2011

- ☐ HUD issued the income limits for 2011 on May 31, 2011
- ☐ An existing project in 2011 had to be placed in service **on or before May 30, 2011**
- ☐ An existing project in 2011 may use the greater of their 2010 or 2011 income limits

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### New Non-Impacted Projects

- ☐ A new non-Impacted project is one placed in service on or after the date HUD issues the new income limits for the current year
- ☐ In 2011, a new project is one placed in service **on or after May 31, 2011**
- ☐ A new project in 2011 has to use the 2011 income limits even if they are less than those issued for 2010

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### Existing vs New Non-Impacted Projects

- ☐ Every year an owner of a non-Impacted project must decide if it qualifies as existing or if it is new
- ☐ A project is considered to be new just one year, the year it is placed in service
- ☐ The year after it is placed in service, a new project becomes an existing project

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### Key Dates to Remember

- ☐ To use the HERA-Special income limits, a project had to have been **PIS by 12/31/08**
- ☐ HUD issued the 2010 income limits **on May 14, 2010** so a project PIS by May 13, 2010 may continue to use their 2009 income limits if they are higher than their 2010 and 2011 limits

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### Key Dates to Remember cont'd

- ☐ HUD issued the 2011 income limits **on May 31, 2011** so a project PIS by May 30, 2011 may continue to use their 2010 income limits if they are higher than their 2011 limits

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## HUD-Assisted MTSPs

- An owner of a HUD-assisted property that becomes an MTSP must use the applicable MTSP income limit to qualify existing HUD residents for the LIHTC program

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## HUD-Assisted MTSPs cont'd

- To qualify a new applicant, the owner must compare the household's gross annual income to ***the lesser of*** the relevant HUD income limit and the applicable MTSP income limit

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## Income Limits cont'd

- Section 236/Tax Credit Tenant, Section 236/RAP/Tax Credit Tenant or Section 236/Rent Supplement/Tax Credit Tenant
  - Because these HUD programs use 80% of the AMI and the highest possible LIHTC income limit is 60% of the AMI, use the LIHTC limit to qualify an applicant for a blended unit

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## Income Limits cont'd

### ☐ Project Based Section 8/Tax Credit Tenant

- Pre 1981 Universe Contracts use the tax credit income limit
- Post 1981 Universe Contracts use **the lesser of** HUD's very low income limit or the applicable MTSP income limit

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## Unanswered Question

- ☐ If a Section 8 contract (or Section 236 regulatory agreement) requires an owner to use the 80% of the AMI limit, but the owner qualifies all applicants at 60% of the AMI to qualify for LIHTC, is it a violation of the HAP contract to not rent to residents between 60% and 80% of the AMI?

- ☐ Need an answer from Washington ...

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## Deep Rent Skew

- ☐ If the applicant must qualify for a unit that will meet the deep rent skew requirement, or if the owner committed to a tax credit income limit less than 50% of the AMI, the resident must qualify at the applicable MTSP limit

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### PRAC/Tax Credit Income Limit

- For an owner to approve a household to occupy a tax credit unit and receive PRAC rental assistance, the tenant must qualify at **the lesser of** HUD's very low income limit or the applicable MTSP income limit

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### The Applicable Fraction

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### Applicable Fraction

- The IRS measures the portion of a building occupied by tax credit families by calculating its applicable fraction
- The applicable fraction is that percentage **of a building** occupied by LIHTC-qualified residents

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### Applicable Fraction cont'd

- The applicable fraction (A/F) is always **the lesser of** the:
  - Unit Fraction – percentage of low income units in a building; vs
  - Square Footage Fraction – percentage of low income square footage (floor space) in a building
- Examples

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### Applicable Fraction Example

- 100 Unit Single Building Project
- Residential Square Footage = 80,000
- Owner Commits to the 20% @ 50% minimum set aside and receives a credit allocation covering 70% of the units
- Owner needs 20 tax credit units to meet minimum set aside & 70 tax credit units to maximize the credit allocation cont'd

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### Example cont'd

- Eligible households occupy 70 units & 56,800 sq ft at the end of the first year of the credit period
- Unit A/F =  $70/100 = 70\%$
- Sq Ft A/F =  $56,800/80,000 = 71\%$
- First Year A/F = 70%

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## Section 8 Property

- ☐ 100% Section 8 100 Unit Project Uses the Low Income Limit is now also 100% LIHTC
- ☐ Owner Commits to 40% @ 60%
- ☐ Since it is a pre-81 universe Section 8 contract, residents must qualify at the 60% MTSP income limit
- ☐ If it was a post-81 universe Section 8 contract, residents would qualify at HUD's very low income limit

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## Section 8 Property Deep Rent Skew

- ☐ 100 Units; 100% Section 8 Post-81 Contract
- ☐ 100% LIHTC; Owner Commits to 40% @ 60% and to Deep Rent Skew
- ☐ Is a post-81 universe contract so 85 units must be rented at HUD's very low income limit and 15 units at the applicable 40% of AMI MTSP limit
- ☐ If a pre-81 universe contract, 85 units would be rented at applicable 60% MTSP income limit and 15 units at applicable 40% MTSP income limit

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## Existing Residents

- ☐ Existing residents do not grandfather into the tax credit program
- ☐ They qualify at the same income limit as new applicants
- ☐ A unit occupied by an ineligible household cannot generate tax credits

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## HUD Existing Residents

- ☐ Owner may not involuntarily displace HUD assisted residents because they are protected by the HUD model lease
- ☐ As long as an ineligible HUD assisted resident occupies a unit, it cannot generate a tax credit

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## Placed in Service Dates for Acquisition/Rehab Projects

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## PIS Dates

- ☐ Acquisition credits are placed in service as of the date of acquisition
- ☐ Owner selects period of time, up to 24 months, to spend the rehabilitation costs and place the rehabilitation credits in service
- ☐ The rehabilitation credits are placed in service by building

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### Start of the Credit Period

- ☐ If the owner completes a building's rehab the year of acquisition, the credit period may begin the year of acquisition
- ☐ If the owner completes a building's rehab the year following acquisition, the credit period may begin January of the year the owner completes the rehab

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### Complete Rehab the Year of Acquisition

- ☐ When an owner completes the rehab the year of acquisition, the credits can flow from the units with existing residents s/he certifies at acquisition
- ☐ The IRS allows an owner to make a TIC effective on the date of acquisition if it is complete within 120 days of acquisition

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### Example

Date of acquisition is June 1, 2010

Owner completes initial TICS June 1, 2010 through September 30, 2010\*

Units occupied by LIHTC-qualified residents begin to produce LIHTC in June 2010

\*Technically, 120 days after June 1st is September 27th

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## Rehab Complete the Year Following Acquisition

- ☐ Units begin to generate credits the year the owner places the rehabilitation in service
- ☐ Owner should certify residents within 120 days of the projected start of the credit period
- ☐ If the owner certifies a resident more than 120 days before the start of the credit period, they should test their income for the 140% rule at the start of the credit period

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## Example

Date of acquisition is June 1, 2010

Owner completes the rehabilitation during 2011

Owner completes the initial TICs during  
September – December 2010 and January 2011

The building's acquisition & rehabilitation credits  
flow to the owners as of January 2011

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## Safe Harbor Rule

- ☐ If an owner completes a TIC more than 120 days before the start of the credit period, they may "refresh" that TIC by having the resident certify to any change in the income since completing their TIC during the 120 days leading up to the start of the credit period
- ☐ The resident signs a statement and provides a copy of a document (pay stub, SS award letter) showing the change

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### Safe Harbor Rule cont'd

- ☐ If the resident's income has risen above 140% of their income limit since they completed their initial TIC, the owner must implement the available unit rule
- ☐ Implementing the safe harbor rule is most important for mixed-income projects where an owner must make correct decisions about renting every available unit to either an LIHTC or market resident

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### Example cont'd

Owner acquired a building in June 2010 and places its rehabilitation credits in service during 2011

Owner must implement the safe harbor rule for LIHTC residents certified before September 2010\*

\*Technically, 120 days before January 1, 2011 is September 3, 2010

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### Relocation During the Rehabilitation Period

- ☐ If the rehabilitation requires taking units out of service and relocating the residents, the owner may claim credits during the months prior to taking the units out of service and again after placing the units back into service

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### Example

Date of acquisition is March 1, 2011

Owner certifies residents by June 30, 2011

Owner completes the rehabilitation between  
August and October 2011

Units can generate credits March – July  
2011 and November – December of 2011

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### LIHTC Two-Thirds Rule

- ☐ If a unit is first occupied by a tax credit eligible household after the end of the first year of the credit period, it produces a tax credit under the LIHTC two-thirds rule
- ☐ The unit produces an annual credit equal to two-thirds the annual credit it would have produced if occupied by a qualified family by the end of the first year of the credit period

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### Two-Thirds Rule Example

- ☐ Owner earns a \$12,000 annual tax credit if a unit is LIHTC-qualified by the end of the first year of the building's credit period
- ☐ The same unit will produce an annual credit of \$8,000 if it is not occupied by an LIHTC-qualified resident until after the close of the first year of the credit period

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## Annual Income Calculations and Verification Requirements

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### Annual Income Calculations

- ☐ Averaging a resident's annual income versus using the highest number based on their circumstances
  - Use the highest reasonable number to determine a household's LIHTC eligibility
  - Use the average to determine the correct amount of rental assistance for the resident

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### Required TIC Form

- ☐ Can an owner use a resident's HUD 50059 as their LIHTC TIC?
  - Since there is no standardized form issued by the IRS, each state agency decided on their required TIC form
  - An owner must know if their HFA allows them to use the 50059 as the LIHTC TIC

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## Annual Income Calculations cont'd

### □ Anticipated Income -

- For LIHTC, include income family anticipates receiving during the 12 months following the TIC's effective date
- For HUD, an owner may do an interim recertification to incorporate income a family will begin to receive during the 12 months following completion of the certification

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## Example

- The spouse to the head of the household will begin to receive Social Security benefits six months after the effective date of the tenant income certification
- For LIHTC, include six months of SS benefits in their annual (initial) income certification
- For HUD, do an interim recertification to incorporate the Social Security income when the resident actually begins receiving SS benefits

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## LIHTC Asset \$5,000 Rule

- The LIHTC program allows a resident to self-certify the income from their assets if their cash value totals no more than \$5,000
- An owner must complete third party verifications on a resident's assets to meet HUD requirements

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## Use of EIV Data

- ❑ Owners of HUD-assisted properties must use information obtained through EIV to verify annual income
- ❑ The LIHTC program forbids owners from using EIV data to verify a household's annual income

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## The Student Rule

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## Tax Credit Full Time Student Rule

- ❑ 100% full time student household is ineligible unless
  - Everyone in the household is married and files, or is eligible to file, a joint tax return with their spouse
  - The household consists of a single parent & child and nobody is a dependent on another person's tax return except for the return of a child's other parent

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### Full Time Student Rule cont'd

- A family member is receiving TANF (PA)
- A family member is participating in a job training program
- A family member was a foster child

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### Section 8 Student Rule

- The owner must consider the income of a student's parents to determine the eligibility of any student who is under 24 years old unless the student is
  - Married
  - A veteran
  - An orphan or ward of the court

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### Section 8 Student Rule cont'd

- A graduate or professional student; or
- Has one or more dependents
- The rule applies to all full-time and part-time students enrolled in an institution of higher education

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### Section 8 Student Rule cont'd

- ☐ The rule does not apply to students living with their parents or guardians or to persons with disabilities who were living in assisted housing on 11/30/05
- ☐ A student under 24 years old may become exempt from the rule by demonstrating independence from his/her parents

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### Students in the 236 Program

- ☐ Students applying for the Section 236 program must qualify under the student rule added to the 4350.3 handbook through Change One
- ☐ Applicants for the RAP and Rent Supplement programs must qualify under the same student rule

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### Eligible Students 236 Program

- ☐ To be head of household, a student must be
  - ☐ Of legal contract age
  - ☐ Have established a separate household for at least one year prior to application or be an independent student
  - ☐ Not be claimed as a dependent by parents or legal guardians

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## An Independent Student

- ☐ An independent student must
  - Be at least 24 years old by December 31<sup>st</sup>
  - An orphan or ward of the court
  - A veteran
  - A graduate or professional student
  - Married or
  - Have legal dependents other than a spouse

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## Scholarships & Grants

- ☐ Exclude all scholarships and grants for an LIHTC resident who is not receiving any form of Section 8 rental assistance
- ☐ Include scholarships and grants received in excess of the amount needed to pay tuition for LIHTC residents who receive any form of Section 8 rental assistance, except for residents who live with their parent/guardian, are over 23 with dependent children, or are disabled and received Section 8 on 11/30/05

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## Scholarships & Grants

- ☐ Exclude scholarships & grants for students living in a Section 236, RAP, Rent Supplement or 221(d)(3)BMIR unit

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## Projects for the Elderly

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## Projects for the Elderly

- ☐ We know that a Section 202 project is created to provide affordable housing for elderly persons
- ☐ However, other HUD programs may also be used to create housing for elderly persons
- ☐ Each HUD program has its own way of defining an elderly household that qualifies for an elderly unit

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## Section 236 Projects for the Elderly

- ☐ In Section 236 projects for the elderly -
  - ☐ In units for the elderly, head, co-head or spouse must be 62 years old
  - ☐ In units for the disabled, a household member (could be a child) must be disabled and need the special features of the accessible unit

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## Section 8 Projects for the Elderly

### ☐ Some Section 8 Projects

- May give preference to households with a head, co-head or spouse who is at least 62 years old
- If they implement this elderly preference, they must set aside a percentage of their units for young, disabled households based on their occupancy at the project in 1992

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## 202/8 Developments

- ☐ 202/8 for the elderly – Head, co-head or spouse must be elderly or disabled, depending on the unit
- ☐ 202/8 for persons with a physical disability – An adult must have a physical disability
- ☐ 202 group home – An adult must have the disability the home is approved to serve

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## PRAC Developments

- ☐ 202 PRAC – A person in the household must be 62 years of age
- ☐ 811 PRAC – An adult member of the household must have a disability
- ☐ 811 PRAC Group Home – An adult member of the household must have the disability the home is approved to serve

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## LIHTC Projects for The Elderly

- ❑ Traditionally, an owner who wanted to create an LIHTC project for the elderly qualified for an exemption under fair housing law to rent
  - All of their units to households comprised entirely of people at least 62 years of age; or
  - To rent most of their units to households including persons who are least 55 years old

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## LIHTC Projects for The Elderly cont'd

- ❑ When an owner refinances a HUD project for the elderly through the LIHTC program, they must continue to follow the HUD rules governing the eligibility of elderly households

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## Waiting List Requirements

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## HUD Waiting List Requirements

- ❑ HUD has rules owners must follow in how they administer their waiting list of applicants waiting for occupancy
- ❑ Specifically, each HUD program has rules an owner must follow for applying preferences which impacts when an applicant will be selected from the waiting list for processing for their eligibility

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## Section 236 Program Preferences

- ❑ The owner of a Section 236 project must:
  - Give a preference to an applicant who has been displaced by government action or by a presidentially declared disaster
  - If operating a 236 project for the military, give a preference to a military family

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## RAP Ranking Requirements

- ❑ 236 Projects with RAP must rank applicants using the following system:
  - First, applicants needing RAP rental assistance to afford the 236 basic rent
  - Second, applicants able to pay at least the 236 basic rent but less than the 236 market rent
  - Third, applicants able to pay the 236 market rent

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## Section 8 Income Targeting

- ☐ An owner with a Section 8 HAP contract must:
  - ☐ Rent 40% of the Section 8 units that come available in a year to residents with income no greater than 30% of the AMI; and
  - ☐ Be able to demonstrate compliance with this rule when HUD or a contract administrator performs a management and operating review for the project

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## LIHTC Waiting List Requirements

- ☐ The IRS reminds owners that they must meet all fair housing requirements in the way they administer their waiting list
- ☐ The IRS does not require an owner apply any preferences in the way they administer their waiting list
- ☐ The HFA may have required the owner apply a preference in their regulatory agreement

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## Occupancy Standards

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## IRS Occupancy Standards

- ☐ The IRS does not tell owners how many people may or may not live in an LIHTC unit
- ☐ The IRS does remind owners they must follow fair housing and landlord and tenant law in applying occupancy standards
- ☐ State agency may establish occupancy standards for a project in its regulatory agreement

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## Occupancy Standards cont'd

- ☐ HUD guidance is provided in Chapter 4 of the 4350.3 handbook -
  - ☐ No more than 2 persons should be required to share a bedroom
  - ☐ Single person cannot have more than 1 bedroom unless needed for a disability
  - ☐ Parent decides whether or not to share a bedroom with child

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## Required Forms

- ☐ Does the HFA allow an owner to use the HUD 50059 as their TIC?
- ☐ An owner must demonstrate compliance with the 140% rule if they are using the 50059 as their LIHTC TIC
- ☐ An owner must continue to use the HUD model lease at a HUD/LIHTC project
- ☐ Many state agencies have verification forms they require owners use

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### Required Forms cont'd

- ❑ Managers at all HUD-assisted projects must receive training to know all the forms HUD requires including –

- HUD 9887
- HUD 9887-A
- Customer Fact Sheet
- HUD-50059
- Etc...

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### Fair Housing and Section 504

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### Fair Housing and Section 504

- ❑ Section 504 is part of a rehabilitation act passed in 1973 and protects the right of persons of the disabilities in HUD-assisted properties
- ❑ Fair housing law also protects the rights of persons with disabilities but in some areas, Section 504 requires owners take a more proactive approach to protecting the rights of the disabled

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## Fair Housing and Section 504 cont'd

- ☐ Under Section 504, an owner must pay for a reasonable accommodation requested by an applicant, resident, employee or perspective employee, unless doing so would cause an undue financial or administrative burden or change the nature of the program operating at the project

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## Fair Housing and Section 504 cont'd

- ☐ Section 504 requires owners to transfer an in house tenant waiting for an available accessible unit
- ☐ The owner must also comply with the LIHTC transfer rule

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## LIHTC Transfer Rule

- ☐ A resident may transfer within the same building and the two units exchange their status
- ☐ A resident can transfer to a different building in the same project if their income was not more than 140% of their income limit at their most recent recert, and the two units exchange their status

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## LIHTC Transfer Rule cont'd

- ☐ A resident of a 100% LIHTC project can transfer to any other unit in any other building included in the same project
- ☐ Remember that what buildings are included in the same project is defined on Line 8b of a building's 8609 form

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## Part Two

### How Much Rent Can You Charge?

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## Maximum Allowable Rent

- ☐ In the LIHTC program, maximum allowable rent is
  - ☐ 30% of the income limit for an assumed household size
  - ☐ Assume 1.5 persons per bedroom
  - ☐ Assume 1 person for an efficiency or studio apartment

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### Maximum Rent Example

20% at 50% set aside Impacted Project

One bedroom unit

Utility allowance = \$70

1-person HERA Special 50%= \$22,500

2-person HERA Special 50%= \$24,900

$(\$22,500 + \$24,900)/2$

\$47,400/2      cont'd

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### Max Rent Example cont'd

$\$47,400/2 = \$23,700$  HERA Special Limit for  
1.5 person household

$\$23,700 \times 30\% = \$7,110$

$\$7,110/12 = \$592$  (rounded down)

$\$592 - \$70 = \$522$  – Maximum allowable  
tenant rent to owner

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### Max Rent Example

❑ 2 bedrooms x 1.5 = 3 persons

❑ 3 person income limit = \$42,100

❑ 2 bdrm utility allowance = \$95

❑  $\$42,100 \times 30\% = \$12,630$  = annual rent

❑  $\$12,630/12 = \$1,052$  gross monthly rent

❑  $\$1,052 - \$95 = \$957$  tenant rent

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## Maximum Allowable Rent cont'd

### □ Section 236 Projects

- HUD or a CA approves a basic rent and a market rent based on an approved budget submitted by the owner
- 236 tenant must pay at least the basic rent but no more than the market rent

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## Section 236 Tenant Rent Formulas

### □ Without Utility Allowance

- Tenant Rent is the Lesser of
  - 30% of Tenant's Adjusted Income
  - 236 Market Rent
  - But never less than the Basic Rent

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## Section 236 Tenant Rent Formulas

### □ With a Utility Allowance

- Tenant Rent is the Greater of
  - 30% of Adjusted Income – UA
  - 25% of Adjusted Income
  - Never less than the Basic Rent nor more than the Market Rent

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### 236 Tenant Rent Example

- ☐ 2 bdrm with \$80 Utility Allowance
- ☐ Basic = \$700    Market = \$925
- ☐ Tenant Adjusted Income = \$32,000
- ☐  $\$32,000 / 12 \text{ months} = \$2,667$
- ☐  $\$2,667 \times 30\% = \$800$
- ☐  $\$800 - \$80 = \$720 = \text{Tenant Rent}$

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### Max Rent for 236/Tax Credit

- ☐ Owner must charge a tenant living in a tax credit unit in a Section 236 project the lesser of the tax credit tenant rent or the Section 236 tenant rent

- Example

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### 236/Tax Credit Tenant Rent Example

- ☐ Tax Credit Tenant Rent = \$957
- ☐ 236 Basic Rent = \$700
- ☐ 236 Market Rent = \$925
- ☐ Section 236 Tenant Rent using 236 Tenant Rent Formula = \$720
- ☐ Tenant Rent = \$720

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## 236 & Project Based Section 8

- ❑ 236 Basic Rent = S8 Contract Rent
- ❑ The Tenant's TTP and Tenant Rent are calculated using the formulas for the assistance program
  - Example

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## Example

- ❑ Basic/Contract Rent = \$700
- ❑ Tenant Rent = \$200
- ❑ HAP = \$500

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## Project Based Section 8 in LIHTC Project

- ❑ Gross Rent = HUD Approved Contract Rent Plus the Utility Allowance
- ❑ Gross Rent Referred to as the Operating Rent in the 202 and 811 PRAC Programs

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### TTP and HAP Payments

- ☐ Section 8 or PRAC Tenant Pays the Greater of 30% of their Adjusted Income or 10% of their Gross Income for Rent & Utilities
- ☐ Referred to as Total Tenant Payment
- ☐ HUD Pays the Remaining Portion of the Gross Rent not Covered by the TTP

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### Gross Rent

- ☐ Contract Rent = \$900
- ☐ Utility Allowance = \$100
- ☐ Gross Rent = \$1,000

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### Tenant Rent

- ☐ TTP = \$400
- ☐ Utility Allowance = \$100
- ☐ Tenant Rent = \$300

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### HAP Payment

- ☐ Gross Rent = \$1,000
- ☐ TTP = \$400
- ☐ HAP = \$600

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### Section 8/Tax Credit Rent Example

- ☐ Tax Credit Rent = \$850
- ☐ Section 8 Contract Rent = \$1,050
- ☐ Tenant Contribution = \$550
- ☐ Section 8 HAP Payment = \$500
- ☐ Total Revenue = \$1,050

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### Section 8 Residents cont'd

- ☐ The tenant rent may exceed the maximum tax credit rent if it is based on HUD program requirements and the owner receives an assistance payment for the resident

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## Housing Choice Vouchers

- ☐ A tenant may not use a voucher in a unit covered by a project based subsidy contract
- ☐ To live in the unit, the tenant must give up the voucher and use the project based rental assistance

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## PRAC Rental Assistance

- ☐ At initial occupancy, a PRAC resident pays more than the HUD approved rent for the unit if their TTP exceeds the rent
- ☐ The owner pays the excess amount paid by the resident into the project's residual receipts account

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## PRAC Example

- ☐ Operating Rent = \$600
- ☐ Tenant's TTP = \$650
- ☐ Residual Receipts Deposit = \$50
- ☐ PRAC Payment = \$0

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### PRAC Properties cont'd

- ☐ When an owner does not receive a PRAC assistance payment on behalf of a tenant, the rent paid by the tenant may not exceed the maximum allowable tax credit rent

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### Additional Charges

- ☐ HUD does not allow owners to charge application fees, credit check fees, processing fees
- ☐ Owners cannot charge fees for Use of project Included in the tax credit eligible basis

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### Part Three

## Long Term Compliance

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## Annual Recertifications

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## HUD Recertifications

- ☐ Anniversary date the 1<sup>st</sup> day of the month the resident took occupancy or began receiving assistance
- ☐ If a resident moved in anytime during July, the owner must complete their annual recertification as of July 1st

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## Tax Credit Recert Schedule

- ☐ Effective date of initial TIC is the date of occupancy
- ☐ Owner must recertify a resident annually within 120 days prior to the effective date of the original TIC
- ☐ If their original TIC was effective 4/15, the owner must recertify the resident annually within 120 days of 4/15

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### 100% LIHTC Properties

- ☐ HERA 2008 states that owners of 100% LIHTC properties are not required to complete annual recertifications
- ☐ Every owner of a 100% LIHTC project should check with their HFA on their implementation of this provision

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### 100% LIHTC Properties cont'd

- ☐ Owners of 100% LIHTC projects are still required to have their residents certify their eligibility under the LIHTC student rule on the anniversary of their original tenant income certification
- ☐ Each owner should use the student certification form required by their HFA

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### Existing Residents

- ☐ Existing HUD residents will be on a recertification schedule when an owner acquires a property using LIHTC
- ☐ After completing the initial TICs, the owner should ask the tax credit monitoring agency to grant approval to marry their LIHTC recertifications to the resident's HUD recert schedule

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## 100% Tax Credit Properties

- ☐ Owners need to complete annual and interim recertifications per HUD requirements
- ☐ There is no such thing as a waiver from completing HUD recertifications as required in Chapter 7 of the 4350.3 handbook

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## Available Unit Rule

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## Available Unit Rule

- ☐ For the LIHTC program, if the owner finds a resident's income has increased above 140% of their current income limit, they must rent the next available unit of comparable or smaller size in the same building to a tax credit eligible tenant

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### Available Unit Rule cont'd

- If the next available unit must also be rented to a resident who qualifies for the Section 236, Section 8, or 202/811 PRAC programs, the owner must certify the resident meets all the eligibility criteria for the relevant HUD program as explained in Chapter 3 of the 4350.3 handbook

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### Interim Recertifications

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### Interim Recertifications

- HUD requires that a resident report for an interim recertification if:
  - Their income goes up at least \$200/month;
  - Someone who was unemployed becomes employed; or,
  - The resident wants to add or subtract a household member

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## Interim Recertifications cont'd

- ❑ The LIHTC program does not require owners complete interim recertifications because there is no rental subsidy to recalculate based on changing household circumstances
- ❑ Interim recertifications have no bearing on the annual recertification schedule for either the LIHTC or HUD programs

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## Transfers

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## Transfers

- ❑ HUD allows owners to establish more of their own transfer policies
- ❑ HUD allows owners to decide if they will allow a resident to transfer because they prefer another view, don't like their neighbor, prefer another building in the project, etc...

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### Transfers cont'd

- ☐ HUD requires owners transfer a resident when:
  - An accessible unit is available and a disabled resident has requested a transfer; or
  - A resident is overcrowded or overhoused
- ☐ Most Section 8 contracts allow rental subsidy to float

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### Transfers cont'd

- ☐ Tax Credit Transfer Rule
  - Can transfer within same building and remain eligible on initial TIC
  - Can transfer to another building at the same property if a resident's income is not more than 140% of their income limit

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### Transfers at 100% LIHTC Projects

- ☐ Because owners are not required to complete annual recertifications at 100% LIHTC projects, a resident may transfer to any other unit in any other building included in the same project
- ☐ Remember that which buildings are included in the same project is defined on Line 8b of each building's 8609 form

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## Transfers at Mixed Income LIHTC Projects

- ☐ A resident may transfer within the same building and the two units involved in the transfer exchange their status (LIHTC vs. non-LIHTC)
- ☐ A resident may transfer to a different building included in the same project if their income was not more than 140% of their income limit at their most recent recertification

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## Transfers cont'd

- ☐ Owners of HUD subsidized tax credit properties must manage transfers so they comply with both HUD and tax credit transfer requirements

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## Transfers cont'd

- ☐ An owner must watch the impact on:
  - ☐ The building's applicable fraction when transferring a resident within the same building and the two units are of different sizes
  - ☐ The applicable fraction for both buildings when transferring a resident to a different building in the same project, and they don't both have LIHTC status prior to the transfer

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### Transfers cont'd

- ☐ If a HUD/tax credit tenant refuses a transfer required by the HUD handbook:
  - They lose their HUD subsidy; but,
  - They maintain their status within the LIHTC program

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### 236/LIHTC Residents

- ☐ If a 236 tenant refuses a HUD-required transfer, they must pay the HUD-approved market rent for their unit
- ☐ If the resident is also a LIHTC resident, the owner should not charge them more than the LIHTC rent

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### 236/LIHTC Residents cont'd

- ☐ Is it a violation of HUD regulations if an owner fails to charge a 236 resident, who refused a required transfer, the market rent because it is greater than the LIHTC allowable rent?
- ☐ We need an answer from Washington ..

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### Section 8/LIHTC Residents

- ☐ If a Section 8 resident refuses a required transfer, they must pay the contract rent and their utilities without HUD assistance
- ☐ If the resident is also a LIHTC resident, because they are no longer receiving rental assistance, the owner may charge them no more than the LIHTC rent

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### Section 8/LIHTC Residents cont'd

- ☐ Is it a violation of HUD regulations if an owner fails to charge a resident, who refused a required transfer, the full contract rent because it is more than the LIHTC allowable rent?
- ☐ We need an answer from Washington ...

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### PRAC/LIHTC Residents

- ☐ If a PRAC resident refuses a required transfer, the owner seeks an eviction
- ☐ The resident continues to pay 30% of their adjusted income
- ☐ Is it a violation of HUD regs to not charge a PRAC resident 30% of their adjusted income if it is more than the LIHTC rent?

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## Vacant Units

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## Vacant Units

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- ☐ Tax Credit Vacant Unit Rule
  - The owner must maintain records that show their efforts to prepare and lease their vacant units to new low income residents as soon as possible
- ☐ Section 8/PRAC Special Claims for Vacancy Loss
  - An owner must provide records required by HUD to substantiate their claims per the Special Claims Guide Book

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## Reporting

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## Reporting

- ☐ Owners of Section 236 projects must continue to provide HUD with their excess income reports
- ☐ All owners of HUD-assisted projects must meet HUD's annual audit requirements
- ☐ An LIHTC owner must comply with their HFA's requirements for providing an owner's annual certification of compliance

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## Part Four

### Private Activity Bonds

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### Private Activity Bonds

- ☐ A HUD-assisted project may have received its LIHTC via financing through the private activity, tax-exempt bond program
- ☐ An owner may qualify for LIHTC that accompany bond financing if they structure the project so that it meets the basic requirements of the LIHTC program

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### Bond Minimum Set Aside

- ☐ An owner must commit to a minimum set aside and has the same options as in the LIHTC program
  - ☐ 20% @ 50% of AMI
  - ☐ 40% @ 60% of AMI
  - ☐ Deep Rent Skew
    - ☐ 15% of low income units @ 40% of AMI

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### Bond Income Limits

- ☐ A property financed with tax-exempt bonds is an MTSP
- ☐ The owner uses the MTSP income limits HUD issues for the LIHTC program discussed earlier in this training

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### Maximum Allowable Rents

- ☐ There are no regulations that limit the rents an owner charges for a tax-exempt bond unit but the bond issuing agency may set limitations in the bond regulatory agreement
- ☐ If a unit is also an LIHTC unit, the owner is limited to charging no more than the maximum LIHTC rent

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### Full Time Students

- ☐ Under HERA 2008, an owner of a bond financed property, regardless if the property also has tax credits, must implement the fulltime student rule for the LIHTC program
- ☐ Owner must implement the LIHTC student rule for all eligibility determinations completed after July 30, 2008

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### Bond Available Unit Rule

- ☐ In the regulations for the tax-exempt bond program, the available unit rule is implemented by property, instead of by building as it is in the LIHTC program
- ☐ The owner must rent the next available unit of comparable or smaller size **on the property** to a bond eligible resident when discovering a resident's income is more than 140% of their income limit

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### Available Unit Rule cont'd

- ☐ The owner of a bond-financed project:
  - ☐ With LIHTC, follows the LIHTC available unit rule
  - ☐ Without LIHTC, follows the bond available unit rule

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## Bond Regulatory Agreement

- An owner should know the what their bond regulatory agreement says on the following topics
  - Maximum Rents
  - Verifications/Form Requirements
  - Annual Recertifications
  - Placement of low income units in multiple building projects
  - Monitoring/Reporting Requirements

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## Part Five

### Wrap Up With Questions

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## Questions?

Liz Bramlet, President  
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